

IN THE
SUPREME COURT OF MISSOURI

SC92351

BOB JOHNSON, *et al.*,

Plaintiffs-Appellants,

vs.

STATE OF MISSOURI, *et al.*,

Defendants-Respondents.

On Appeal from the Circuit Court of Cole County, Missouri
The Honorable Patricia Joyce

RESPONDENT'S BRIEF FOR
SECRETARY OF STATE ROBIN CARNAHAN

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ARGUMENT

Responding to Appellants' Points Relied On.

Respondent Secretary of State Robin Carnahan, through counsel the Attorney General, submits the following:

The role of the Secretary of State, with regard to the apportionment of the State into House districts for the General Assembly, is defined by the Missouri Constitution. It consists only of being the recipient of plans filed by either the citizens' commission or the appellate apportionment commission:

Not later than five months after the appointment of the commission, the commission shall file with the secretary of state a tentative plan of apportionment and map of the proposed districts

Not later than six months after the appointment of the commission, the commission shall file with the secretary of state a final statement of the numbers and the boundaries of the districts together with a map of the districts

... a commission of six members appointed from among the judges of the appellate courts ... shall sign and file its apportionment plan and map with the

secretary of state within ninety days of the date of
the discharge of the apportionment commission....

Art. III, § 2, Mo. Const. Plaintiffs' Petition in this case addresses the third clause, instructing the appellate apportionment commission to "file its plan and map with the secretary of state within ninety days."

The facts alleged in the Petition confirm that the Secretary of State did precisely what the Constitution requires – to receive the filing of an apportionment plan presented by a commission established pursuant to the Constitution, within the period of time that the commission exists pursuant to the Constitution. Receiving the filing of an apportionment plan and map is a purely ministerial function, and the Petition does not allege (and cannot allege) that the Secretary did anything other than what the Constitution contemplates she will do.

The Plaintiffs have raised questions concerning the constitutionality of the plan and map filed by the appellate apportionment commission on November 30, 2011, not whether the Secretary satisfied her ministerial function. And the Secretary will abide by the Court's final decision with regard to whether the plan and map filed by the appellate apportionment commission will be used in administering elections for the General Assembly.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that a true and correct copy of the foregoing was filed electronically via Missouri CaseNet, and served, on February 24, 2012, to:

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The undersigned further certifies that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 395 words.

/s/ Jeremiah J. Morgan
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